APPENDIX A

United States Court of Appeals
for the Eighth Circuit

No. 03-2422

Beverly Anderson,	*	
	*	
Appellant,	*	
	*	Appeal from the United States
v.	*	District Court for the Eastern
	*	District of Arkansas.
Dassault Aviation,	*	
	*	
Appellee.	*	

Submitted: January 16, 2004

Filed: March 4, 2004

Before WOLLMAN, MORRIS SHEPPARD ARNOLD, and COLLOTON, Circuit Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

This is a product liability suit brought by Beverly Anderson, a Michigan resident, to recover for injuries that she suffered while working as a flight attendant on a Dassault Falcon business jet owned by her employer, Amway Corporation. The jet was on its descent into a Michigan airport when it underwent a series of pitch oscillations, allegedly buffeting Ms. Anderson about in the aircraft and causing her injuries. The jet was manufactured in France by Dassault Aviation, a French

corporation. Business jets manufactured by Dassault Aviation, which account for the majority of the company's revenue, are sold under the trade name Falcon, and are exclusively sold and leased in the western hemisphere by Dassault Falcon Jet Corporation, which is a wholly owned subsidiary of Dassault Aviation. (Dassault Aviation and various of its subsidiaries, including Dassault Falcon Jet, are known collectively as Dassault Aviation Group.) Dassault Falcon Jet bought the jet on which Ms. Anderson was injured from Dassault Aviation in France, and then flew the jet to Little Rock, Arkansas, where it completed the jet and sold and delivered it to Amway.

Ms. Anderson initially filed suit in the Western District of Michigan against Dassault Aviation, Dassault Falcon Jet, and Honeywell, Inc. (which manufactured the autopilot in the jet). The Michigan district court granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction, leaving Ms. Anderson's action against Honeywell and Dassault Falcon Jet pending there. Ms. Anderson then re-filed the suit against Dassault Aviation in the Eastern District of Arkansas. The Arkansas district court granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction, from which Ms. Anderson now appeals. We review the dismissal for lack of personal jurisdiction *de novo*. *See Barone v. Rich Bros. Interstate Display Fireworks Co.*, 25 F.3d 610, 612 (8th Cir. 1994), *cert. denied*, 513 U.S. 948 (1994). Because we conclude that Dassault Aviation has sufficient contacts with Arkansas to subject it to personal jurisdiction there consistent with due process, we reverse.

I.

In a diversity action, a federal court may assume jurisdiction over a nonresident defendant only if the requirements of the forum state's long-arm statute are satisfied and the exercise of jurisdiction comports with due process. *See Burlington Indus., Inc. v. Maples Indus., Inc.*, 97 F.3d 1100, 1102 (8th Cir. 1996). Arkansas's long-arm statute, Ark. Code Ann. § 16-4-101, gives the state's courts personal jurisdiction over persons and claims

"to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution." The only issue in this appeal is thus whether the due process clause permits an Arkansas court's assertion of personal jurisdiction over Dassault Aviation.

In order for an Arkansas court to assert personal jurisdiction over Dassault Aviation consistent with due process, Dassault Aviation must "have certain minimum contacts" with Arkansas "such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)). Dassault Aviation's contacts with Arkansas must be sufficient to cause it "reasonably [to] anticipate being haled into court there." *Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Whether due process is satisfied depends not only on the quantity of contacts that Dassault Aviation has with Arkansas, but also on the "quality and nature" of those contacts, *see International Shoe*, 326 U.S. at 319. In assessing the nature of the contacts between Dassault Aviation and Arkansas, appropriate circumstances to consider include the burden on Dassault Aviation of litigating the case in Arkansas, the interest of Arkansas in adjudicating the dispute, Ms. Anderson's interests in obtaining convenient and effective relief, "the interstate judicial system's interest in obtaining the most efficient resolution of controversies, and the shared interest of the several states in furthering fundamental substantive social policies." *See Falkirk Mining Co. v. Japan Steel Works, Ltd.*, 906 F.2d 369, 374 (8th Cir. 1990).

II.

A.

Dassault Aviation's contacts with Arkansas result, in large part, from its business relationship with Dassault Falcon Jet, which operates a large production site in Little Rock that completes Falcon jets to customers' specifications. The district

court determined that Dassault Aviation itself was neither present nor doing business in Arkansas, and that Dassault Falcon Jet's activities there were relevant to the jurisdictional inquiry only if Ms. Anderson could "pierce the corporate veil" and show that Dassault Aviation's wholly owned subsidiary was actually its "alter ego." Concluding that Dassault Aviation did not sufficiently control and dominate the affairs of Dassault Falcon Jet to allow Dassault Falcon Jet's corporate existence to be disregarded, the district court granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction.

The district court relied on *Epps v. Stewart Info. Servs. Corp.*, 327 F.3d 642, 645-47 (8th Cir. 2003), in which we held that a holding company which owned stock in various companies, including a title and guaranty company, was not subject to personal jurisdiction in Arkansas based on the title and guaranty company's Arkansas activities. Dassault Aviation contends that we established a bright-line rule in *Epps* under which, when asking whether assertion of personal jurisdiction over a parent corporation comports with due process, the activities of the parent's subsidiary must be entirely disregarded unless the subsidiary's corporate veil can be pierced under state law. We did note in *Epps* that the plaintiffs were unable to pierce the subsidiary's corporate veil. *See id.* at 650. But in reaching our conclusion that the holding company's "mere ownership of [the title and guaranty company] is too distant and limited a contact with Arkansas to justify subjecting it to the District Court's exercise of personal jurisdiction," *id.*, we also noted that the "circumstances in each case must be examined to determined whether a corporation through the activities of another corporation has subjected itself to jurisdiction in a state under its long arm statute," *id.* at 649 (internal quotations omitted).

We think that the district court placed undue reliance on the principle of piercing the corporate veil. Determining the propriety of jurisdiction at a particular place always involves applying principles of fairness and reasonableness to a distinct

set of facts, and the determination is not readily amenable to rigid rules that can be applied across the entire spectrum of cases. In any event, this case is clearly distinguishable from *Epps*, because, as discussed below, Dassault Aviation's contacts with Arkansas go well beyond "mere ownership" of Dassault Falcon Jet. We agree with Ms. Anderson that neither physical presence in Arkansas nor piercing Dassault Falcon Jet's corporate veil is required to establish the minimum contacts necessary for the exercise of personal jurisdiction in Arkansas. Dassault Aviation's establishment of a distribution system in Arkansas, and marketing its products there, are matters that we may appropriately consider in determining whether the assertion of personal jurisdiction in Arkansas comports with due process.

B.

We conclude that Dassault Aviation has sufficient contacts with Arkansas to support an Arkansas court's assertion of personal jurisdiction over it whether or not Dassault Falcon Jet is its alter ego. Dassault Aviation and Dassault Falcon Jet have a close, synergistic relationship that is not an abuse of the corporate organizational form, but is clearly relevant to the jurisdictional question. The majority of jets sold worldwide by Dassault Aviation fly in and out of Arkansas to be completed to the specifications of consumers at the Dassault Aviation Group's largest production site by Dassault Aviation's wholly owned subsidiary and exclusive distributor of business jets in the western hemisphere. We think that it is contrary to common sense to maintain that Dassault Aviation's nexus to the state of Arkansas is so minimal that it is not amenable to suit there.

Dassault Aviation benefits greatly from Dassault Falcon Jet's exclusive distribution of its business jets throughout the western hemisphere, and Dassault Aviation has a clear awareness of and interest in its subsidiary's substantial operations in Arkansas. Dassault Aviation states in its 2001 annual report that *"Dassault Aviation* has been present particularly in the US since the start of the 1970s through its specialized Falcon subsidiary – Dassault Falcon Jet – which has

three offices in Teterboro (New Jersey), Little Rock (Arkansas) and Wilmington (Delaware). The Group's largest production site is in Little Rock." (Emphasis added.) Thus, Dassault Aviation touts in its own annual report that its "presence" in the United States has been especially significant in the state of Arkansas.

A website operated and administered jointly by Dassault Aviation and Dassault Falcon Jet (www.dassaultfalcon.com) includes a "time line," which purportedly chronicles the companies' "fascinating cavalcade of milestones" and their "Tradition of Excellence." The two companies provide the following information in their 1995 entry: "Continuing the consolidation effort, Dassault Falcon Jet now completes all new Falcon business jets at its plant in Little Rock, where a major standard for Falcon customers in both hemispheres." The 1998 entry states: "Major expansion brings Dassault Falcon Jet Little Rock to almost half a million square feet – and boosts the center's production capacity to over 60 new aircraft completions per year. Little Rock is now the main completion center for all Falcon jets worldwide." The time line also reports that the Little Rock facility by 1998 "employ[ed] more workers than any single Dassault Aviation plant in France."

The companies' website explains the role of the Little Rock completion center, stating that "Falcons are manufactured in France, then flown in 'green' condition to the completion center where optional avionics and a custom interior are installed, and the exterior is painted." Jets sold to customers by both Dassault Aviation and Dassault Falcon Jet are flown in and out of the Little Rock completion center. Dassault Aviation itself paid over $126 million to Dassault Falcon Jet in the seven years preceding the filing of this action for completions done in Little Rock to Falcon jets that Dassault Aviation then sold to other parties. The companies indicate their pride in the Arkansas facility and its importance to their success by noting on their website that the Little Rock completion center is "one of the best-equipped and most efficient facilities anywhere – the envy

of the completion industry – another testament to the Dassault Falcon passion." ("Dassault Falcon" is the name of the division of Dassault Aviation that specializes in Falcon business jets; Dassault Aviation's other division, called "Dassault Defense," focuses on military programs.)

Because the two companies have a closely intertwined business relationship, Dassault Aviation's nexus with Arkansas and the Little Rock completion center goes well beyond mere ownership of Dassault Falcon jet stock. This is not a situation in which Dassault Aviation simply placed the jet at issue "into the stream of commerce" which fortuitously swept it into Arkansas. Dassault Aviation bought what is now Dassault Falcon Jet in 1994, and since then has consistently acted to consolidate the image and operations of the two companies. The companies acknowledge that as early as 1995 they were "[c]ontinuing the consolidation effort" by making "[q]uality Little Rock completions . . . standard for Falcon customers in both hemispheres." In a 2001 press release, Dassault Falcon Jet, discussing the Dassault Aviation Group, states that "[g]roup synergy is viewed as an important key to competitiveness." The group is able to achieve such synergy, in part, because the directors of the two companies overlap: both the CEO and the President of Dassault Falcon Jet are also officers and directors of Dassault Aviation. (The CEO of Dassault Falcon Jet receives all of his compensation from Dassault Aviation.)

Both companies use the word "Dassault" in their name, and they utilize a common logo. As the head of the Dassault Falcon division of Dassault Aviation (who is also Dassault Falcon Jet's CEO) testified, the companies "unify the efforts of both Dassault Aviation and Dassault Falcon Jet to create this brand and logo image." As discussed above, the companies share a website. They also jointly put together a publication entitled "Falcon Operator Directory," which lists seventeen Dassault jets owned and operated by persons or companies in Arkansas. The directory also gives contact information for a "field service representative" in Little Rock who provides services and

information to Falcon operators in Arkansas, an "authorized service center" for Falcon jets in Little Rock, and a designated salesperson for potential Arkansas customers. The two companies also jointly publish and disseminate publications entitled "Worldwide Customer Service" and "Falcon Operator Services Guide," both of which provide contact information for a representative in Arkansas, and a customer service newsletter entitled "Update," which includes Arkansas-related Falcon news. It is readily apparent from the jointly produced website and publications, and the similarities in names and logos, that the two companies utilize a unified marketing strategy. Part of this unified strategy includes highlighting the activities of the Little Rock completion center and marketing various Falcon jet services to Arkansas customers.

We have stated that "a foreign manufacturer that successfully employees one or two distributors to cover the United States intends to reap the benefit of sales in every state where those distributors market." *Clune v. Alimak AB*, 233 F.3d 538, 544 (8th Cir. 2000), *cert. denied*, 533 U.S. 929 (2001). Dassault Falcon Jet not only marketed and sold products in Arkansas, but it operated the Dassault Aviation Group's largest production facility there. We conclude that Dassault Aviation "purposefully directed its products to the United States," and specifically to Arkansas, where most Falcon jets are completed, "through the distribution system it set up in this country." *See id.* Dassault Aviation clearly intended to reap the benefits of Dassault Falcon Jet's substantial presence in Arkansas, as is made clear in the statements from its annual report and the website that it co-operates. Given the central importance of the Little Rock completion center to the success of Dassault Aviation's worldwide sales of business jets, and Arkansas's specific and identifiable role in Dassault Aviation's unified marketing endeavors with Dassault Falcon Jet, it would not violate traditional notions of fair play and substantial justice for an Arkansas court to assert personal jurisdiction in this action.

C.

In addition to Dassault Aviation's substantial nexus with Arkansas and the Little Rock completion center, we note that other considerations here also support the exercise of personal jurisdiction in Arkansas. For one thing, we are not convinced that an Arkansas forum would be especially inconvenient for Dassault Aviation. Though the distance between France and Arkansas is substantial, we presume that Dassault Aviation has ready access to air transportation for conveniently making the trip. Arkansas contains one of the central hubs of the Dassault Aviation Group, and is already visited frequently by employees of Dassault Aviation (including the two officers common to both Dassault Falcon Jet and Dassault Aviation). Furthermore, Arkansas has a substantial interest in the matter to be litigated, as the safety of Falcon jets affects the state's consumers and workers who encounter Dassault Aviation's products. Though the injury did not occur in Arkansas, and Ms. Anderson is not an Arkansas resident, the jet at issue here was completed and delivered to its buyer in Arkansas, as are many other Falcon jets. Finally, Ms. Anderson likely has no other forum available to her in this country for her suit against Dassault Aviation. Her action was dismissed in Michigan (where the accident occurred), and Arkansas (where the jet was sold) seems to be the sole remaining logical and convenient place for the litigation to proceed.

III.

In sum, the symbiotic relationship between Dassault Aviation and Dassault Falcon Jet, coupled with the acknowledged importance of Arkansas's production site and Falcon customers to both companies' success, leads us to conclude that an Arkansas court's assertion of jurisdiction over the instant action would be reasonable and fair. We therefore vacate the judgment of the district court and remand the cause for further proceedings.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

[FILED:
APRIL 29 2003]

BEVERLY ANDERSON,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	4:02cv00629 SWW
	*	
DASSAULT AVIATION,	*	
	*	
Defendant.	*	

MEMORANDUM AND ORDER

Beverly Anderson ("Anderson"), a flight attendant on a jet manufactured by Dassault Aviation, a French corporation headquartered in Paris, France, brings this action against Dassault Aviation seeking damages for injuries she claims to have suffered when the jet underwent a series of pitch oscillations while on a flight from Portland International Airport in Oregon to Kent County International Airport in Michigan. The matter is before the Court on motion of Dassault Aviation to dismiss for lack of personal jurisdiction [doc.#2]. Anderson has responded in opposition to Dassault Aviation's motion, and Dassault Aviation has filed a reply to Anderson's response. Having carefully considered the matter, the Court finds that Dassault Aviation's motion to dismiss for lack of personal jurisdiction should be and hereby is granted.

I.

According to the complaint, on October 10, 1999, Anderson, a Michigan resident, was a flight attendant on a Dassault Falcon 900B jet, which was owned by her employer,

Amway Corporation, a Michigan corporation. The jet was approaching its intended destination, Grand Rapids Michigan, when the pilot pulled back on the controls in an effort to disengage the autopilot and level off the aircraft. The digital flight computer responded to this external pitch up maneuver by initiating a nose down trim motion. The combination of these two events caused the jet to undergo a series of pitch oscillations between a 3-degree aircraft nose up and a 4.5 degree aircraft nose down. Anderson, who was in the galley readying the plane for landing when the pitch oscillations occurred, was thrown about in the jet, causing her to violently bounce off the floor and ceiling several times, resulting in severe injuries.

Anderson filed suit in the United States District Court for the Western District of Michigan against Dassault Aviation, as well as Honeywell, Inc., a corporation headquartered in Minnesota at the time of the accident and the manufacturer of the autopilot,[1] and Dassault Falcon Jet Corporation, a wholly-owned subsidiary of Dassault Aviation headquartered in New Jersey that sells and supports Dassault Falcon Jets throughout North and South America and the Pacific Rim countries of Asia, including the People's Republic of China. Dassault Aviation subsequently filed a motion to dismiss for lack of personal jurisdiction. Anderson responded in opposition to Dassault Aviation's motion and also requested that the entire action be transferred to Arkansas, where Dassault Falcon Jet Corporation operates a large "completion center and service base."

By Order dated October 4, 2002, the district court granted Dassault Aviation's motion to dismiss for lack of personal jurisdiction and denied without prejudice Anderson's motion to transfer the action to Arkansas. *See Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich. Oct. 4, 2002). In so ruling, the district court stated that "[i]n the event Plaintiff is successful in establishing that Dassault Aviation is subject to

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[1] Honeywell has since established its headquarters in New Jersey following a merger.

personal jurisdiction in Arkansas, Plaintiff may renew her request for transfer as to the remaining Defendants in this case." *Id.*

On October 10, 2002, Anderson filed suit against Dassault Aviation in this Court, asserting that the jet manufactured and sold by Dassault Aviation was in a defective condition which rendered it unreasonably dangerous, and that Dassault Aviation is strictly liable for her damages as a supplier of a defective product. Anderson's action against Honeywell, Inc. and Dassault Falcon Jet Corporation remains pending in the Western District of Michigan, apparently awaiting a ruling from this Court on whether Dassault Aviation is subject to personal jurisdiction in Arkansas.[2]

II.

Dassault Aviation argues dismissal for lack of personal jurisdiction is warranted because the cause of action occurred in Michigan, Anderson is a Michigan resident, Anderson's medical treatment occurred in Michigan where she resides, and Dassault Aviation is a French corporation having no contacts with Arkansas sufficient to support general jurisdiction consistent with the limitations placed upon the Court by the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Arkansas's long-arm statute, Ark. Code Ann. § 16-4-101.

A.

This Court applies a two-part test to the jurisdictional issue. First, whether the forum state's long-arm statute is satisfied, and second, whether the exercise of jurisdiction comports with due process. *Oriental Trading Co., Inc. v. Firetti*, 236 F.3d 938 (8th

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[2] According to pleadings in the Michigan litigation, Dassault Aviation has been served in France in accordance with the requirements of the Hague Convention. *See Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich.) (Pl. Br. at 2 (10-3-03)).

Cir. 2001); *Clune v. Alimak AB*, 233 F.3d 538, 541 (8th Cir. 2000). Arkansas's long-arm statute gives courts personal jurisdiction of all persons and causes of action "to the maximum extent permitted by the due process of law clause of the Fourteenth Amendment of the United States Constitution." Ark. Code Ann. § 16-4-101. Accordingly, as the Arkansas long-arm statute covers those cases where the Due Process Clause permits the assertion of personal jurisdiction, the only question for this Court is whether the exercise of personal jurisdiction in this case comports with due process. *Firetti*, 236 F.3d at 943; *Clune*, 233 F.3d at 541. *See also Epps v. Stewart Information Services Corp.*, — F.3d —, 2003 WL 1699904 at *3 (8th Cir. Apr. 1, 2003) (applying Arkansas law); *Dean v. Olibas*, 129 F.3d 1001, 1003-04 (8th Cir. 1997) (same); *Burlington Industries, Inc. v. Maples Industries, Inc.*, 97 F.3d 1100, 1102 (8th Cir. 1996) (same).

The Due Process Clause establishes the parameters of a state's power to assert personal jurisdiction over a nonresident defendant. *Clune*, 233 F.3d at 541. In this respect, due process requires that the defendant have sufficient "minimum contacts" with the forum state "so that 'maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Stewart Information Services*, — F.3d —, 2003 WL 1699904 at *3 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-92 (1980)). The defendant's conduct and connection with the forum state must be such that defendant should "reasonably anticipate being haled into court there." *Burlington Industries*, 97 F.3d at 1102. *See also Dakota Industries, Inc. v. Ever Best Ltd.*, 28 F.3d 910, 915 (8th Cir. 1994) (noting that "[s]ufficient contacts exist when an individual's connection with the forum state does not offend traditional notions of fair play and substantial justice and the defendant purposefully avails himself of the privilege of conducting activities within the state, thus invoking the benefits and protections of its laws'"). "This 'fair warning' requirement is satisfied if the defendant[s] ha[ve] 'purposefully directed' [their] activities at residents of the forum . . . , and the litigation results from alleged injuries that

'arise out of or relate to' those activities . . . ." *Firetti*, 236 F.3d at 943 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 472 (1985)). The Eighth Circuit has established a five-factor test to determine the sufficiency of a defendant's contacts: (1) the nature and quality of contacts with the forum state; (2) the quantity of such contacts; (3) the relation of the cause of action to the contacts; (4) the interest of the forum state in providing a forum for its residents; and (5) convenience of the parties. *Burlington Industries*, 97 F.3d at 1102. *See also Davis v. St. Johns Health System, Inc.*, 348 Ark. 17, 24, 71 S.W.3d 55, 59 (Ark. 2002) (viewing five-factor test adopted by the Eighth Circuit in *Burlington Industries* "as helpful"). The first three factors are of primary importance. *Burlington Industries*, 97 F.3d at 1102. The Eighth Circuit has further elaborated on the third factor – the relationship of the cause of action to the contacts – to distinguish between specific jurisdiction, which refers to jurisdiction over causes of action arising from or related to a defendant's actions within the forum state, and general jurisdiction, which refers to the power of a state to adjudicate any cause of action involving a particular defendant regardless of where the cause of action arose and irrespective of the relationship between the cause of action and the contacts. *Id.* at 1102-03. *See also Stewart Information Services*, — F.3d —, 2003 WL 1699904 at *3. When general jurisdiction is in question, defendant may be subject to the forum state's exercise of personal jurisdiction if contacts with the state are continuous and systematic. *Id.*[3]

The plaintiff has the burden to show personal jurisdiction exists. *Burlington Industries*, 97 F.3d at 1102; *Stewart Information Services*, — F.3d —, 2003 WL 1699904 at *2. The plaintiff, however, need only make a *prima facie* showing of jurisdiction. *Dakota Industries*, 946 F.2d at 1387. If the court

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[3] Anderson asserts that jurisdiction over Dassault Aviation is present under both general and specific jurisdiction. *See* Br. in Supp. of Pl.'s Resp. Resp. to Dassault Aviation's Mot. to Dismiss at 18 n. 8.

does not hold a hearing and instead relies on pleadings and affidavits, as is the case here, the court must look at the facts in the light most favorable to the nonmoving party and resolve all factual conflicts in favor of that party. *Id.*

B.

The Court has carefully considered the matter and finds that Anderson has not made a *prima facie* showing of personal jurisdiction over Dassault Aviation. It is undisputed that Dassault Aviation *itself* was neither present nor doing business in Arkansas. In this respect, Anderson does not dispute that Dassault Aviation is a French Corporation and is not qualified or licensed to do business in the State of Arkansas; that it maintains no offices in the State of Arkansas and owns no real or personal property in the State of Arkansas; that it does not maintain an agent for service of process in the State of Arkansas; that it does not have a telephone listing in the State of Arkansas; that it does not have any warehouse or manufacturing facilities in the State of Arkansas; that it does not have a bank account in the State of Arkansas; that it does not insure any person in the State of Arkansas; that it does not enter into any contracts to furnish goods or products in Arkansas; and that it has not consented to be haled into court in Arkansas. Bertaux Aff. at ¶¶ 2-13 (Ex. B, Dassault Aviation's Mot. to Dismiss). Rather, Anderson's argument is that Dassault Aviation "has progressively adopted a course of action to purposefully blur the distinction between [Dassault Aviation] and its exclusive distributor and wholly owned subsidiary, Dassault Falcon Jet," Br. in Supp. of Resp. to Dassault Aviation's Mot. to Dismiss at 12, that Dassault Falcon Jet Corporation's activities are "imputed" to Dassault Aviation, *id.* at 13, that Dassault Aviation and Dassault Falcon Jet Corporation share two officers, *id.* at 12, and that "[t]he business jet in this case was 'completed' *and* delivered in Little Rock, Arkansas to Ms. Anderson's employer." *Id.* at 2 (emphasis in original).[4]

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[4] Anderson's argument, then, reduced to its essence, is that Dassault

i.

In situations in which the defendant is a nonresident parent corporation, "personal jurisdiction can be based on the activities of the nonresident corporation's in-state subsidiary, but only if the parent so controlled and dominated the affairs of the subsidiary that the latter's corporate exercise was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant's ego." *Stewart Information Services*, — F.3d —, 2003 WL 1699904 at *4 (citing *Contractors, Laborers, Teamsters & Engineers Health Plan v. Hroch*, 757 F.2d 184, 190 (8th Cir. 1985); *Lakota Girl Scout Council, Inc. v. Havey Fund-Raising Management, Inc.*, 519

Falcon Jet Corporation is an "alter ego" of Dassault Aviation, although she does not use that specific term in this litigation. In the Michigan litigation, Anderson argued that "[p]ersonal jurisdiction over defendant, Dassault Aviation, does not arise out of the mere contention that Defendant's subsidiary is Defendant's 'alter ego'; rather, it is well established that Defendant's subsidiary is the sole distributor of Defendant's business and private aircraft in the United States." *Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich.) (Pl.'s Br. at 5) (3-14-02)). Similarly, Anderson's central argument in the instant litigation is that "Dassault's activities within Arkansas, both independently and through its wholly owned subsidiary/exclusive distributor has been consistent, systematic and substantial for years . . ." Br. in Supp. of Pl.'s Resp. to Dassault Aviation's Mot. to Dismiss at 9. However, Anderson's argument and supporting evidence refers only to activities conducted by Dassault Falcon Jet Corporation and not Dassault Aviation. That being so, and based on the Eighth Circuit's recent opinion in *Stewart Information Services* — F.3d —, 2003 WL 1699904, this Court construes Anderson's argument as being that the acts of Dassault Falcon Jet Corporation are those of Dassault Aviation – that the distinction between the two corporations has been "blur[red]" and that Dassault Aviation controls the operational minutia of its wholly owned subsidiary, Dassault Falcon Jet Corporation, such that the latter's acts may be "imputed" to Dassault Aviation. In other words, what is in essence an "alter ego" argument.

F.2d 634, 637 (8th Cir. 1975)). In order to prevail, Anderson must show by "clear proof" that Dassault Aviation "so controls the 'operational minutia' of its subsidiaries that have minimum contacts with Arkansas that [Dassault Aviation] itself can be said to be doing business in Arkansas." *Id.* at *2. "If the resident subsidiary corporation is the alter ego of the nonresident corporate defendant, the subsidiary's contacts are those of the parent corporation's, and due process is satisfied." *Id.* at *4 (citing *Lakota Girl Scout Council*, 519 F.2d at 637). As the Eighth Circuit has noted,

> [a] corporation is not doing business in a state merely by the presence of its wholly owned subsidiary. *Cannon Manufacturing Co. v. Cudahy Packing Co.*, 267 U.S. 333, 45 S. Ct. 250, 69 L.Ed. 634 (1925). However, the fiction of corporate entity may be disregarded, where one corporation is so organized and controlled and its affairs are so conducted that it is, in fact, a mere instrumentality or adjunct of another corporation. *Even a non-owned corporation may act as an agent for another corporation.* No all embracing rule has been laid down under which the relationship between two corporations may be determined. The circumstances in each case must be examined to determine whether a corporation through the activities of another corporation has subjected itself to jurisdiction in a state under its long arm statute.

Stewart Information Services, — F.3d —, 2003 WL 1699904 at *4 (quoting *Lakota Girl Scout Council*, 519 F.2d at 637, and adding emphasis).

In view of these principles, a court's assertion of jurisdiction is contingent on the ability of Anderson "to pierce the corporate veil." *Id.* State law is viewed to determine whether and how to pierce the corporate veil. *Id.* "The Arkansas courts have stated that the doctrine of piercing the corporate veil is founded in equity and is applied when the facts warrant its application to prevent injustice." *Id.* (citing *Humphries v. Bray*, 611 S.W.2d 791, 793 (Ark. Ct. App. 1981)). "Piercing the fiction of a

corporate entity should be applied with great caution." *Id.* (citing *Banks v. Jones*, 390 S.W.2d 108, 111 (Ark. 1965)). A parent corporation is not liable for the debts of its subsidiaries merely because the parent corporation holds the controlling interest or because the two are managed by the same officers. *Id.* (citing *Rounds & Porter Lumber Co. v. Burns*, 225 S.W.2d 1, 2 (Ark. 1949)). "Rather, it is only when the privilege of transacting business in corporate form has been illegally abused to the injury of a third person that the corporate entities should be disregarded." *Id.*

ii.

As previously noted, it is undisputed that Dassault Aviation itself was neither present nor doing business in Arkansas – it has no place of business, mailing address, personal property, agent for service of process, etc., to connect the corporation directly to the state. In addition, notwithstanding Anderson's argument that Dassault Aviation has purposefully "blur[red]" the distinction between Dassault Aviation and Dassault Falcon Jet Corporation, none of the evidence she has submitted – including operator directories, press releases, websites, distributorship agreements, annual reports, and financial statements – shows that Dassault Falcon Jet Corporation was controlled and manipulated by Dassault Aviation, that it had independent existence in form only, and that it was thus the mere instrumentality or alter ego of Dassault Aviation. *See In re B.J. McAdams, Inc.*, 66 F.3d 931, 937 (8th Cir. 1995) (applying Arkansas law). She has not, in other words, shown that the "parent so controlled and dominated the affairs of the subsidiary that the latter's corporate existence was disregarded so as to cause the residential corporation to act as the nonresidential corporate defendant's alter ego," thus imputing Dassault Falcon Jet Corporation's acts to Dassault Aviation. *Stewart Information Services,* — F.3d —, 2003 WL 1699904 at *4.

It is of no import that the corporations share two officers – Jean-Francois Georges (senior vice president of civil aircraft in Dassault Aviation and Chief Executive Officer of Dassault

Falcon Jet) and Jean Rosanvallon (president of Dassault Falcon Jet and a vice president of Dassault Aviation). Merely because the two corporations are managed by the same officers does not thereby make the acts of Dassault Falcon Jet Corporation those of Dassault Aviation. *See Stewart Information Services*, — F.3d —, 2003 WL 1699904 at *4 (citing *Rounds & Porter Lumber Co.*, 225 S.W.2d at 2). Rather, the evidence of record reveals nothing more than a typical corporate relationship between a parent and its wholly owned subsidiary; the record is devoid of evidence suggesting that the Dassault Aviation disregarded Dassault Falcon Jet Corporation's corporate existence.

Turning to Anderson's argument that the jet was "completed" in Arkansas, the Court finds that this argument is misleading and of no import to the personal jurisdiction analysis as "completion" in this context refers only to the fact that the new Falcon jets are flown in "green" condition (equipped with basic avionics, but without exterior paint or passenger interior, or without optional equipment) from the factory in France to, among other places, Little Rock, Arkansas, where they are "completed" to customer specifications. Pl.'s Ex. 4 (Dassault Falcon Press Release); Pl.'s Ex. 18 (Georges Depo. at 19-20). In this respect, Anderson does not dispute that in 1994 Dassault Falcon Jet Corporation purchased the jet in France from Dassault Aviation, took title to and possession of the jet in France, and *then* brought the jet into Arkansas, "completed" it, and sold it to Anderson's employer. *See Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich. April 8, 2002) (Opinion of Quist, J.). Indeed, plaintiff acknowledged in the Michigan litigation that Dassault Falcon Jet Corporation, not Dassault Aviation, "was responsible for 'completing' the subject jet, selling the jet, and ultimately delivering same in Little Rock, Arkansas to the Amway Corporation." *Anderson v. Dassault Aviation, et al.*, No. 1:01cv00640 (W.D. Mich.) (Pl.'s Br. at 2 (10-3-03)). Thus, the fact that the jet was "completed" in Arkansas does not assist Anderson in her personal jurisdiction analysis.

Finally, the Court rejects Anderson's reliance on the Arkansas Supreme Court's recent decision in *Davis v. St. Johns Health System, Inc.*, 348 Ark. 17, 71 S.W.3d 55 (Ark. 2002). *Davis* concerned a medical malpractice case in which the plaintiff, a Missouri resident, sued a Missouri corporation, St. John's Health System, which was qualified to do business in Arkansas, in Arkansas state court after being admitted to a hospital in Arkansas for damages relating to a misdiagnosis that occurred by a Missouri doctor in a Missouri hospital owned by St. John's. The state court dismissed the case, finding that St. John's was not subject to personal jurisdiction in Arkansas. The Arkansas Supreme Court reversed based on plaintiff's allegations that St. John's operated through its subsidiary medical care facilities within Arkansas, owned substantial property within Arkansas, employed Arkansas residents and others working in Arkansas on a daily basis, and had a designated agent for service of process in Arkansas. 348 Ark. at 26-27, 71 S.W.3d at 60-61. The Arkansas Supreme Court concluded that "designating an agent for service of process in Arkansas *and* doing business in the state through a wholly owned subsidiary which entails ownership of substantial property and employment of employees in Arkansas subjects St. John's to the personal jurisdiction of our courts." *Id.* 348 Ark. at 27,71 S.W.3d at 61 (emphasis in original). Here, by contrast, there has been no showing that Dassault Aviation owns substantial property within the state, employs Arkansas residents and others working in Arkansas on a daily basis, or has a designated agent for service of process in Arkansas. Anderson's reliance on *Davis*, then, is misplaced and does not support her assertion of personal jurisdiction over Dassault Aviation.

iii.

In sum, Anderson has failed to overcome the general rule that "a parent corporation that owns a subsidiary – even wholly owns a subsidiary – is not present in the state merely because the subsidiary is there." *Stewart Information Services*, — F.3d

—, 2003 WL 1699904 at *5. Applying the five-factor test set forth in *Burlington Industries*, 97 F.3d at 1102, this Court finds Anderson has failed to link Dassault Aviation to Arkansas except as a parent corporation and that Dassault Aviation's mere ownership of Dassault Falcon Jet Corporation is insufficient to justify subjecting it to this Court's jurisdiction.

III.

For the foregoing reasons, the Court hereby grants Dassault Aviation's motion to dismiss for lack of personal jurisdiction. Judgment will be entered accordingly.

IT IS SO ORDERED this 29th day of April 2003.

/s/
CHIEF JUDGE
UNITED STATES DISTRICT COURT

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY ANDERSON,

Plaintiff,

Case No. 1:01-CV-640

v.

HON. GORDON J. QUIST

DASSAULT AVIATION,
DASSAULT FALCON JET
CORPORATION, and
HONEYWELL, INC.,

Defendants.
----------/

ORDER

For the reasons stated in the Court's prior Opinions and Orders and on the record following oral argument by telephone on October 3, 2002, regarding Plaintiff's request for transfer,

IT IS HEREBY ORDERED that Defendant Dassault Aviation's Motion to Dismiss (docket no. 11) is **GRANTED**. Dassault Aviation is **dismissed without prejudice**.

IT IS FURTHER ORDERED that Plaintiff's request for transfer is **DENIED WITHOUT PREJUDICE**. In the event Plaintiff is successful in establishing that Dassault Aviation is subject to personal jurisdiction in Arkansas, Plaintiff may renew her request for transfer as to the remaining Defendants in this case. The Court notes that its rulings regarding the issues in this

Order do not reflect the Court's view whether Dassault Aviation is subject to personal jurisdiction in Arkansas.

Dated: October 4, 2002

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BEVERLY ANDERSON,

Plaintiff,

Case No. 1:01-CV-640

v.

HON. GORDON J. QUIST

DASSAULT AVIATION,
DASSAULT FALCON JET
CORPORATION, and
HONEYWELL, INC.,

Defendants.
----------/

MEMORANDUM ORDER

Plaintiff, Beverly Anderson, sued Defendants, Dassault Aviation ("Dassault"), Dassault Falcon Jet Corporation ("Dassault Falcon"), and Honeywell, Inc.("Honeywell"), for negligent design and manufacture of an aircraft with an incorporated digital flight guidance computer. Dassault, a French corporation, moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(2), arguing that the Court lacks personal jurisdiction over it. On April 8, 2002, the Court issued an Opinion and an Order placing the motion on the administrative docket. The Court determined that it had no general personal jurisdiction over Dassault, but directed the parties to engage in discovery regarding whether Dassault had sufficient contacts in Michigan that subject it to limited personal jurisdiction pursuant to Michigan's long-arm statute, M.C.L. § 600.715. Such

discovery has been completed and Plaintiff and Dassault have filed supplemental briefs which have been reviewed by the Court.

Once Dassault challenged the Court's jurisdiction, Plaintiff bears the burden of establishing the existence of personal jurisdiction. *Int'l Techs. Consultants, Inc. v. Euroglas S.A.*, 107 F.3d 386, 391 (6th Cir. 1997). Plaintiff may not rest on the pleadings but must set forth specific facts to demonstrate that the Court has jurisdiction. *Theunissen v. Matthews*, 935 F.2d 1454, 1458 (6th Cir. 1991). Pleadings and affidavits are viewed in the light most favorable to Plaintiff. *Serras v. First Tenn. Bank Nat'l Ass'n*, 875 F.2d 1212, 1214 (6th Cir. 1989). Federal courts sitting in diversity must apply the law of the forum state when considering whether the exercise of personal jurisdiction is proper. *Welsh v. Gibbs*, 631 F.2d 436, 439 (6th Cir. 1980).

I. Sufficient Contacts

Plaintiff asserts that her tort action arose in Michigan and that this is enough to establish sufficient contacts under the long-arm statute. Plaintiff's injuries occurred in the airspace above Michigan. The aircraft she was on board was en route from Oregon to Michigan, and her injuries occurred during the plane's descent into Kent County International Airport.

In *Theunissen*, the defendant submitted an affidavit disclaiming any contacts with Michigan, the forum state. *Theunissen*, 935 F.2d at 1456-57. He was a sole proprietor operating a lumber yard in Windsor, Ontario, and claimed that he did not hold property, did not employ any person, and conducted no business in Michigan. The plaintiff responded by submitting evidence indicating that the defendant maintained an address in Michigan and had entered into contracts for sale of lumber in Michigan. The district court granted the defendant's motion to dismiss for lack of jurisdiction. On appeal, the United States Court of Appeals for the Sixth Circuit reversed, and concluded that, assuming the plaintiff's allegations were true, the defendant had maintained a residence in Michigan and

contracted with Michigan businesses. This alone was sufficient to establish jurisdiction, and the causal relationship between the plaintiff's injury and the defendant's contacts with Michigan further supported that conclusion. *Id.* at 1460-61.

In the instant case, Plaintiff has presented no evidence indicating a connection of Dassault to Michigan outside of the injury and the sale of the Dassault jet by Dassault Falcon to a corporation based in Michigan. Dassault does not have offices, employees, agents, real or personal property, bank accounts, or telephone listings in Michigan, nor has Plaintiff provided any evidence that Dassault entered into any contracts for the sale of goods or services in Michigan. Further, Dassault is not qualified or licensed to conduct business in Michigan, does not pay taxes to the State of Michigan, and does not insure any person in Michigan.

Thus, Plaintiff must establish that Dassault's involvement in the transactions and business contacts of Dassault Falcon, its wholly-owned subsidiary, brings Dassault within the long-arm statute. However, mere ownership of the subsidiary is insufficient; Plaintiff must demonstrate an alter-ego relationship or an undue amount of control (a parent company will always exercise some amount of control). *Roethlisberger v. Tokyo Aircraft Instrument Co. (TKK) of Japan*, No. 1:90-CV-885, 1992 WL 237317, at *2-3 (W.D. Mich. Jan. 13, 1992). In other words, Plaintiff must show that Dassault Falcon was a "mere instrumentality" of Dassault. *Id.* at *3 (quoting *Make v. Copper Range Co.*, 121 Mich. App. 518, 524, 328 N.W.2d 430, 433 (1982) (per curiam)). Even though Dassault Falcon was the exclusive distributor of Dassault's aircraft, and the two companies may have shared common members between the two boards of directors that is insufficient to create personal jurisdiction over Dassault. *Roethlisberger* at *3. In addition, for the relationship between Dassault and Dassault Falcon to be used by Plaintiff in this context, it has to have existed as of the date the cause of action arose or by the date the action was commenced. *Witbeck v. Bill Cody's Ranch Inn*, 428 Mich. 659,

680, 411 N.W.2d 439, 449 (1987). Thus, Plaintiff's references to a joint website and common logo are insufficient because they occurred after that time period.

Therefore, Plaintiff's alleged links between Dassault and Dassault Falcon are insufficient to persuade this Court that it should disregard the formal corporate separation between Dassault and Dassault Falcon. Plaintiff has failed to carry her burden that Dassault had sufficient contacts in Michigan that would enable the Court to exercise limited personal jurisdiction pursuant to the long-arm statute.

II. Constitutional Considerations

Assuming for the sake of argument that Dassault had sufficient contacts in Michigan, constitutional concerns of due process limit the application of Michigan's long-arm statute. *Theunissen,* 935 F.2d at 1459 (citing *Welsh*, 631 F.2d at 439). The exercise of jurisdiction, even if authorized by statute, must comport with "'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316, 66 S. Ct. 154, 158 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463, 61 S. Ct. 339, 343 (1940)). The Sixth Circuit has set forth three criteria that must be met before a court will exercise personal jurisdiction:

> First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable.

Kerry Steel, Inc. v. Paragon Indus., Inc., 106 F.3d 147, 150 (6th Cir. 1997) (quoting *So. Mach. Co. v. Mohasco Indus., Inc.*, 401 F.2d 374, 381 (6th Cir. 1968)). Michigan state courts undertake the same analysis. See *Jeffrey v. Rapid Am. Corp.*, 448 Mich.

178, 186, 529 N.W.2d 644, 649 (1995) (quoting *Mozdy v. Lopez*, 197 Mich. App. 356, 359, 494 N.W.2d 866, 868 (1992)).

While the Court need not go through the criteria because sufficient contacts do not exist, the Court notes that Plaintiff cannot meet the first criterion, as Dassault did not purposefully avail itself of the privilege of conducting business or causing consequences in Michigan. This requirement "ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts, or of the 'unilateral activity of another party or a third person.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S. Ct. 2174, 2183 (1985)(citations omitted). Dassault has never completed a sale directly to a Michigan resident; rather, Dassault sells its planes to Dassault Falcon, which, in turn, sells the planes to customers all over the United States and elsewhere. It is foreseeable that Dassault's product could ultimately cause injury in Michigan, but this is not enough to fulfill the purposeful availment criterion.

In *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 100 S. Ct. 559 (1980), the Supreme Court reviewed the exercise of jurisdiction over a New York automobile distributor by an Oklahoma court. The Court concluded that even though it was foreseeable that a car sold by the distributor could end up in Oklahoma and be involved in an accident, this was insufficient for the Oklahoma court's jurisdiction. *Id.* at 295, 100 S. Ct. at 566. In a later case, Justice O'Connor, writing for a plurality, made clear that the mere act of placing a product into the stream of commerce is not a "purposeful availment" where there is no other indication that the defendant was taking advantage of the privilege of conducting business in the forum state. *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 112, 107 S. Ct. 1026, 1032 (1987). There must be something more, such as specific design, advertisement, or marketing directed to the forum state. *Id.* Thus, the fact that a Dassault-manufactured product was sold to a corporation in Michigan and allegedly caused an accident in the airspace over

Michigan is not enough to meet the purposeful availment requirement. See *Vargas v. Hong Jin Crown Corp.*, 247 Mich. App. 278, 9293-95, 636 N.W.2d 291, 301-02 (2001).

Therefore, Plaintiff has not met her burden of establishing that Dassault had sufficient contacts in Michigan to fall within the long-arm statute. Even if she had, constitutional considerations demonstrate that Dassault did nothing more than merely place its product into the stream of commerce.

In her supplemental brief, Plaintiff requested that the Court transfer the case to the Eastern District of Arkansas if Dassault's motion is granted. Subsequently, Plaintiff and Honeywell submitted a stipulation to the Court to defer briefing that issue, and Dassault filed a motion to defer consideration of the transfer issue, which it will oppose, until its motion to dismiss was decided. Dassault's motion to defer (docket no. 34) is **GRANTED**.

The Court defers the dismissal of Dassault Aviation as a defendant until the transfer issue can be briefed and decided. Briefs shall be submitted to the Court and served on other parties on or before **September 30, 2002**. All reply briefs shall be filed and served on or before **October 11, 2002**.

Dated: September 16, 2002 /s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 03-2422

Beverly Anderson,	*	
	*	
Appellant,	*	
	*	Order Denying Petition for
v.	*	Rehearing and for Rehear-
	*	ing En Banc
Dassault Aviation,	*	
	*	
Appellee.	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

(5128-010199)

April 9, 2004

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit